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Nos. 79-84

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 1948.

UNITED STATES OF AMERICA, *Appellant*,
v.
PARAMOUNT PICTURES, INC., *et al.*, *Appellees*.

No. 1949.

LOEW'S INC., *et al.*, *Appellants*,
v.
UNITED STATES OF AMERICA, *Appellee*.

No. 1950.

PARAMOUNT PICTURES, INC., *et al.*, *Appellants*,
v.
UNITED STATES OF AMERICA, *Appellee*.

No. 1951.

COLUMBIA PICTURES CORPORATION, *et al.*, *Appellants*,
v.
UNITED STATES OF AMERICA, *Appellee*.

No. 1952.

UNITED ARTISTS CORPORATION, *Appellant*,
v.
UNITED STATES OF AMERICA, *Appellee*.

No. 1953.

UNIVERSAL PICTURES COMPANY, INC., ETC., *et al.*, *Appellants*,
v.
UNITED STATES OF AMERICA, *Appellee*.

REPLY OF AMERICAN THEATRES ASSOCIATION, INC., ET AL., AND W. C. ALLRED, ET AL., TO MEMORANDUM IN OPPOSITION TO THEIR MOTIONS FOR LEAVE TO INTERVENE.

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Supreme Court of the United States

OCTOBER TERM, 1946.

No. 1348.

UNITED STATES OF AMERICA, *Appellant*,

v.

PARAMOUNT PICTURES, INC., *et al.*, *Appellees*.

No. 1349.

LOEW'S INC., *et al.*, *Appellants*,

v.

UNITED STATES OF AMERICA, *Appellee*.

No. 1350.

PARAMOUNT PICTURES, INC., *et al.*, *Appellants*,

v.

UNITED STATES OF AMERICA, *Appellee*.

No. 1351.

COLUMBIA PICTURES CORPORATION, *et al.*, *Appellants*,

v.

UNITED STATES OF AMERICA, *Appellee*.

No. 1352.

UNITED ARTISTS CORPORATION, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

No. 1353.

UNIVERSAL PICTURES COMPANY, INC., ETC., *et al.*, *Appellants*,

v.

UNITED STATES OF AMERICA, *Appellee*.

REPLY OF AMERICAN THEATRES ASSOCIATION, INC., ET AL., AND W. C. ALLRED, ET AL., TO MEMORANDUM IN OPPOSITION TO THEIR MOTIONS FOR LEAVE TO INTERVENE.

American Theatres Association, Inc., et al., and W. C. Allred, et al., respectfully submit the following in response to the memorandum filed in these proceedings by the Twentieth Century-Fox, Loew's, RKO, Paramount and Warner defendants in opposition to petitioner's joint motion for leave to intervene:

Point I.

Petitioners Should Be Permitted to Intervene Originally Under the Decision of this Court in United States v. Terminal Railroad Association of St. Louis, 236 U. S. 194.

The defendants attempt to distinguish the *St. Louis Terminal case* on the ground that in that case the petitioners were deprived of a legal right against a public utility—the Terminal Association—whereas in the present case petitioners have no legal right against the defendants which is cut off by the decree. This distinction is based on a misstatement of the facts. In the absence of the decree, the petitioners would have a clear legal right to enjoin a plan for concerted action by the distributors to enforce competitive bidding which the decree attempts to legalize. The decree, by approving that plan, cuts off petitioners' legal right as effectively as the petitioners' legal right was cut off in the *St. Louis Terminal case.*

Further, the contention made by defendants that the consent of the Attorney General to intervention is necessary is without merit since the Attorney General's action cannot affect intervention as of right. The Attorney General certainly has no power to approve of the combination in restraint of trade set up in the court's decree.

In the case of *United States* v. *Columbia Gas & Electric Corp.*, 27 F. Supp. 116, 121, relied on by defendants, the opposition of the Attorney General was based in part on the ground that Mokan was "not entitled to intervention of right." Moreover, when the intervention in that case came under the scrutiny of this Court[1] it was held that the

[1] *Missouri-Kansas Pipe Line Co.* v. *United States*, 312 U. S. 502, 506.

arguments with respect to the Attorney General's guardianship of the public interest misconceived the basis of the right asserted by the intervenors and that "where the enforcement of a public law also demands distinct safeguarding of private interests. . . . the power to enforce rights thus sanctioned is not left to the public authorities nor put in the keeping of the district court's discretion." In other words, intervention in such cases is as of right, not permissive.

Point II.

The Spirit and Intent of Rule 24(a) Should Obtain in this Court as Well as in the District Courts of the United States.

Rule 24(a) of the Rules of Civil Procedure was approved and adopted by this Court as a rule for the protection of those whose interests were vitally affected by a suit in the District Courts to which they were not parties. Petitioners recognize that the Rules of Civil Procedure are specifically restricted to proceedings in the District Courts. However, there being no rule of this Court providing for intervention in proceedings before this Court, it is contended that the spirit and intent of Rule 24(a) should be considered by this Court in determining whether one whose rights are vitally affected may be heard.

Conclusion.

Petitioners assert that they are in a position in the pending litigation before this Court similar to that of the intervenors in the *St. Louis Terminal* and *Missouri-Kansas Pipe Line cases*; that the interests they seek to protect by intervention are of as great consequence and importance as the interests accorded protection by this Court in those cases.

WHEREFORE, petitioners respectfully pray that their joint motion for leave to intervene in the appeals therein designated be granted.

Respectfully submitted,

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June 6, 1947.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

Nos. 79-86

THE UNITED STATES OF AMERICA,
Appellant,
vs.
PARAMOUNT PICTURES, INC., *et al.*

JOINT BRIEF

IN REPLY TO BRIEFS OF *AMICI CURIAE*

This memorandum is submitted on behalf of the five theatre-owning defendants to record their disagreement with and opposition to the briefs submitted by certain groups as *amici curiae.**

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*W. C. Allred, et al., who are also appellants in No. 86;
American Theatres Association, Inc., et al., who are also appellants in No. 85;
The Society of Independent Motion Picture Producers;
American Civil Liberties Union;
The Conference of Independent Exhibitors' Associations; and
The independent theatre owner and operator members of the Motion Picture Theatre Owners of America.

These defendants have sufficiently elaborated in their respective separate briefs their views as to the issues involved in these several appeals. We do not wish, however, by silence to be deemed to have acquiesced in any arguments or to have admitted any statements made in the briefs of the *amici* which were not anticipated and refuted or explained in our several briefs. The briefs of *amici curiae* depart so frequently and so far from the record as to make it as unnecessary as it is impossible to answer them completely with record references. To a large extent the briefs are devoted to an assertion of assumed facts which have no support in or bearing on the proof and findings upon which this Court is here called upon to give its decision.

The District Court said (R. 3553; 66 F. Supp. 354):

> "Moreover, there is no substantial proof that any of the corporate defendants was organized or has been maintained for the purpose of achieving a national monopoly, as was the case in *Standard Oil Co.* v. *United States;* 221 U. S. 1; *United States* v. *American Tobacco Co.,* 221 U. S. 106, and *United States* v. *Aluminum Co. of America,* 148 F. 2d 416 (C. C. A. 2). The five major defendants cannot be treated collectively so as to establish claims of general monopolization in exhibition. They can only be restrained from the unlawful practices in fixing minimum prices, obtaining unreasonable clearances, block-booking, and the other things we have criticized."

No evidence is or could be pointed to, to weaken this conclusion, and yet all the arguments of the *amici* proceed on the assumption that the five so-called "major" defendants not only may, but *must* be treated collectively as a monopoly for unless they are, the results sought by the *amici* cannot possibly follow.

We believe that what *amici* overlook is the basic fact that this case was tried on the theory that defendants had acquired a monopoly, and that the conspiracies alleged were intended to effectuate that monopoly (R. 2777-8). The Government wholly failed to prove this charge, and that failure cannot be remedied by mere *ipse dixit* of *amici*.

Finally, only a word need be said concerning the efforts of the Society of Independent Producers and the American Civil Liberties Union to inject in the case an asserted constitutional question. As the Civil Liberties Union reads the Constitution (brief, p. 20), the showing of a New York City first-run in the Times Square area, without a simultaneous or earlier showing in the Bronx, operates in some unexplained manner to deprive the Bronx and its residents of some unspecified constitutional right. We consider it unnecessary to enter into a debate as to whether the Constitution does in fact guarantee Bronxites an opportunity to see first-run films without riding the subway. For even if we were to concur in this bizarre constitutional doctrine, this Court would still require some showing as to how first-run performances in the Bronx or any other locality would be assured by the magic of divestiture.

Indeed, for similar reasons, the entire constitutional argument advanced by *amici* is quite irrelevant. It is founded upon the assumption that monopoly has been found when in fact the lower court found that no monopoly exists. It would impose a duty on defendants to insure their audiences of a "diversified" program of motion pictures. Yet it loses sight of the affirmative finding of the court below that divestiture would not accomplish that nor any useful purpose.

While we do not wish to yield to *amici* in their great regard for the command of the First Amendment, we ven-

ture to suggest that the Court would have been better served if their briefs had contained more references to the record and fewer references to the ringing phrases in which that great charter of freedom has been preserved.

Respectfully submitted,

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